mortgagor discharged the mortgagee as her solicitor and engaged another solicitor who applied to the mortgagee for information on the securities. The mortgagee refused to give the information unless payment of what was due was guaranteed and threatened to proceed with the sale. The mortgagor brought an action to impeach the securities and restrain the sale of the property, and moved for an interlocutory injunction. The court of first instance refused the injunction but on appeal, the Court of Appeal allowed it, and directed the mortgagor to pay into court not the sum claimed by the mortgagee but only an amount which having regard to the securities would protect the mortgagee and make him save.

There is another reason why in my opinion the ordinary rule is not applicable here. The plaintiffs are challenging the propriety of the sale of the property by the bank to Amcol. Both the defendants are asserting the validity of the sale. The point in issue is not the amount due under the mortgages; nor is it one as to the mode in which the bank proposes to exercise their power. If the defendants succeed, they would be entitled to proceed and would proceed to complete the sale, and in such an event the payment into court of the whole amount due to the bank does not facilitate or assist such completion; it has no relevant connection with the completion of the transaction.

What is relevant, however, is that both the defendants should be protected against any loss or damage which they or either of them may suffer as a result of the interlocutory injunction, should it turn out that the plaintiffs fail at the trial to make good their claim for a perpetual injunction. The protection I had in mind was a fortification of the cross-undertaking as to damages given by the plaintiffs. Unfortunately, on this point I received no meaningful proposal from any party as to the amount the plaintiffs should provide to secure their cross-undertaking. I therefore had to decide what, in my view, would be a fair and reasonable amount. I took the figure of $8m which I considered as fair and reasonable in the circumstances; it represents slightly more than 6% of the sum of $131m. I therefore imposed the term requiring the plaintiffs to deposit in court a sum of $8m or furnish a banker's guarantee for that amount to secure the cross-undertaking as to damages.

Application allowed.

Solicitors: *Wee Ramayah & Partners; Cooma Lau & Loh; Allen & Gledhill.*

Reported by *Terence Tan Bian Chye*

Ong & Co Pte Ltd v Foo Sae Heng

HIGH COURT (SINGAPORE) — SUIT NO 4462 OF 1986
CHAO HICK TIN JC
15 JANUARY 1990

Securities — Memorandum of deposit — Margin account — Construction of memorandum — Bare claim that mortgagee had negligently sold security — Purchase of shares — Whether purchase without instructions

The plaintiffs were stockbrokers. The defendant executed a memorandum of deposit in favour of the plaintiffs in order to obtain facilities from the plaintiffs to deal in stocks and shares on the Singapore Stock Exchange. Pursuant thereto, some securities were deposited with the plaintiffs. The memorandum provided that 'if (the defendant) makes default in paying, (the plaintiffs) may dispose of any securities'. At the request of the defendant, the plaintiffs bought and sold stocks and shares on the defendant's behalf pursuant to a margin account arrangement. Later, the defendant owed an outstanding amount of $168,255.02. The assistant registrar gave summary judgment against the defendant. The defendant claimed that there was negligence on the plaintiffs' part in failing to obtain the best possible price in liquidating the securities. Also, it was claimed that the defendant had never given instructions to purchase the shares.

Held, dismissing the defendant's appeal:

(1) As regards the point that the plaintiffs had been negligent in liquidating the securitites, that was a bare allegation. No evidence was tendered that the securities were not sold at the then market price on the Singapore Stock Exchange.

(2) As regards the point that the defendant had never given instructions to purchase the shares, this point was totally devoid of merit. Debit notes were sent to the defendant. The defendant had not denied that he received the debit notes. If in fact the purchases were contrary to instructions, one would expect an immediate protest by him.

(3) By not objecting to the documents sent to him, he had effectively affirmed that the transactions were properly carried out. He was estopped from denying the same.

(4) The defendant's last point was that the statement of claim was defective because it failed to state what moneys were received from the sale of the securities and how they were utilized to offset outstanding debts due from the defendants to the plaintiffs. These were really matters of details and evidence. The documents furnished by the plaintiffs to the defendant in the ordinary course of business would have clearly shown to the defendant the details he was asking. The court was satisfied that the defendant had no defence and was desperately fishing for one. He was only seeking to delay judgment.

[*Editorial Note*: The defendant has appealed to the Court of Appeal vide Civil Appeal No 131 of 1989.]

Tan Hin Tat for the plaintiffs.
S Asogan for the defendant.

Cur Adr Vult

Chao Hick Tin JC: The plaintiffs were stockbrokers. At the request of the defendant, the plaintiffs bought and sold stocks and shares on the defendant's behalf pursuant to a margin account arrangement. As on 30 June 1986, the

defendant owed an outstanding amount of $168,255.02. The assistant registrar gave summary judgment against the defendant for $162,000.60 plus interest and costs. The judgment amount was reduced as a result of certain payments made after the institution of this action, the full particulars of which were set out in the statement of accounts of 30 September 1987. The defendant appealed to the judge-in-chambers. I dismissed the appeal.

The relation between the parties commenced in June 1983. On 21 June 1983, the defendant executed a memorandum of deposit in favour of the plaintiffs in order to obtain facilities from the plaintiffs to deal in stocks and shares on the Singapore Stock Exchange. Pursuant thereto, some securities were deposited with the plaintiffs, with the appropriate blank transfer forms duly completed. The parties also executed an account agreement on the same date pursuant to which the defendant was given by the plaintiffs a margin account of up to a million dollars to trade in stocks and shares.

Under cl 2 of the memorandum, it was provided that 'if (the defendant) makes default in paying further securing or satisfying to (the plaintiffs) on demand any money or liability hereby secured, (the plaintiffs) may without further notice sell or dispose of any securities hereto or any part thereof or any substituted securities in such manner and for such consideration... as (the plaintiffs) may think fit and (the plaintiffs) may apply the proceeds of sale in or towards discharge of the costs incurred therein and of the money or liabilities hereby secured...'.

Of the sum $168,255.02 claimed in the statement of claim, there was included in it a sum of $57,829.07 for share certificates awaiting collection.

The main points raised in argument by the defendant for leave to defend the action were these:

(i) The plaintiffs were in breach of duty to act diligently when they failed to liquidate the securities upon the defendant's margin account with the plaintiffs exceeding the limit of one million dollars.
(ii) Negligence on the plaintiffs' part in failing to obtain the best possible price in liquidating the securities.
(iii) The defendant had never given instructions to purchase the shares, which certificates were awaiting collection by the defendant.
(iv) The statement of claim had failed to disclose material facts.

On the first point, the defendant argued that cl 2 of the memorandum placed a burden on the plaintiffs to liquidate the securities of the defendant when the defendant's account exceeded the limit of $1m. I could find nothing to that effect in either the memorandum of deposit or the account agreement. The defendant conveniently overlooked the word 'may' in cl 2 of the memorandum — 'you may without further notice sell... '. The discretion was with the plaintiffs. It lay ill in the mouth of the defendant to complain that the plaintiffs had given him time to pay up. There was clearly no merit in this first point.

On the second point, all I saw was a bare allegation on the part of the defendant. No evidence was tendered that the securities were not sold at the then market price on the Singapore Stock Exchange. No objection was ever raised by the defendant when contract notes of the sales in question were received by him. In answer to my query, counsel for the defendant admitted that there was no evidence that the plaintiffs had sold any shares contrary to the instructions of the defendant. On the contrary, the plaintiffs had shown to this court that they had regularly and in the ordinary course of business forwarded to the defendant at his given address the debit notes, credit notes and contra statements evidencing the share transactions placed by the defendant.

As regards the third point, what the defendant alleged was again totally devoid of merit. The debit notes on the shares in question (for which a sum of $57,829.07 was owed by the defendant) were sent to the defendant in the usual manner. The defendant had not denied that he received the debit notes. If in fact the purchases were contrary to instructions, one would expect an immediate protest by him. There was none. The defendant tried to make an issue of the fact that the remisier through whom the defendant dealt with did not file any affidavit. I did not think that was necessary, bearing in mind that all the transactions were documented. I would imagine that over the years a remisier must have dealt with hundreds of clients and entered into thousands of transactions on their behalf. The remisier could not conceivably say anything more than what were in the documents. The defendant had the effrontery to contend that he was under no duty to object to any of the documents sent to him. In my view, by not objecting, he had effectively affirmed that the transactions were properly carried out. He was estopped from denying the same.

As regards the last point, it was argued that the statement of claim was defective because it failed to state what moneys were received from the sale of the securities and how they were utilized to offset outstanding debts due from the defendant to the plaintiffs. In my view, these were really matters of details and evidence. The documents furnished by the plaintiffs to the defendant in the ordinary course of business would have clearly shown to the defendant the details he was asking and these had been exhibited in the plaintiffs' affidavits. The defendant knew precisely what he had to meet. There was no merit in this argument. The defendant also asked how the interest was calculated since the memorandum of deposit did not stipulate the rate of interest. Again, I did not see any substance in this query. The interest rate was stated in the

account agreement; it was not necessary that it should also be stated in the memorandum of deposit.

It seemed to me quite clear that the defendant was one of the many casualties of the Pan Electric debacle. He was a speculator in the stock market who got his fingers burnt. Instead of owning up to his debts, he sought to create issues where none existed. Before the assistant registrar, three other issues were raised: (i) no provision in the agreement to charge interest; (ii) payments made by the defendant were not taken into account; and (iii) the account agreement had expired. He had abandoned these points and had not pursued them before me. On the facts of this case, I could see no legitimate issues that should go to trial. The defendant was trying hard to find an issue. His counsel submitted that the defendant ought to be given an opportunity to prove negligence on the part of the plaintiffs which is a question of fact. But before leave to defend shold be granted, some basis must be shown that the plaintiffs were negligent. The defendant had failed to show any such basis. A bald allegation would not do. Many letters were written by the plaintiffs to the defendant requiring him to top up his margin account. These were ignored. A final letter of demand of 2 July 1986 which also threatened that the matter would be referred to their solicitors brought no reply or contention to the contrary. I was satisfied that the defendant had no defence and was desperately fishing for one. He was only seeking to delay judgment. Accordingly, I dismissed the appeal with costs.

Appeal dismissed.

Solicitors: *Sim Hill Tan & Wong; R Raman & Partners.*

Reported by *Terence Tan Bian Chye*

MALAYSIAN REPORTS

Rajoo s/o Ramasamy v Inspector-General of Police & Ors

SUPREME COURT (KUALA LUMPUR) — CRIMINAL APPEAL NO 05-167-89
HASHIM YEOP A SANI CJ (MALAYA), MOHAMED YUSOFF AND GUNN CHIT TUAN SCJJ
16 FEBRUARY 1990

Administrative Law — Habeas corpus — Person detained under Dangerous Drugs (Special Preventive Measures) Act 1985 for two years — Appeal to High Court and Supreme Court — Extension of time for Advisory Board to consider representations made by detainee — Whether Yang di-Pertuan Agong has power to allow the extension after the period of three months has expired — Interpretation and General Clauses Ordinance 1948, s 39 — Interpretation Act 1948 and 1967, s 2 — Federal Constitution, arts 151(1)(b) & 160(1)

Preventive Detention — Detention under Dangerous Drugs (Special Preventive Measures) Act 1985 — Reference to Advisory Board — Whether Yang di-Pertuan Agong has power to allow extension of time for reference to Advisory Board after period of three months has expired — Dangerous Drugs (Special Preventive Measures) Act 1985, ss 3(1) & 6(1) — Interpretation and General Clauses Ordinance 1948, s 39 — Interpretation Act 1948 and 1967, s 2 — Federal Constitution, arts 151(1)(b) & 160(1)

In this case the appellant had been detained under s 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 for a period of two years with effect from 13 May 1988. The appellant made his representations to the Advisory Board under the provisions of art 151(1)(a) of the Federal Constitution. The date for hearing of his representations was fixed on 20 July 1988. In the meanwhile, the appellant applied for a writ of habeas corpus and this was granted by the High Court on 14 July 1988 and he was ordered to be released. The respondents appealed to the Supreme Court against the order of the High Court. In the meantime, another order for the detention of the appellant was issued and he was arrested and detained. The appellant filed a second application for a writ of habeas corpus. The Supreme Court on 30 January 1989 quashed the decision of the High Court and set aside the order for the grant of habeas corpus. Following the Supreme Court's decision, the minister revoked the second detention order on 24 February 1989. On 28 February 1989, the Yang di-Pertuan Agong allowed the extension of ten months and nine days commencing from 23 May 1988 within which the Advisory Board has to consider the representations made by the appellant and to make its recommendations to the Yang di-Pertuan Agong. The Advisory Board heard the representations and on 27 March 1989 made its recommendations to the Yang di-Pertuan Agong. In accordance with these recommendations, the Yang di-Pertuan Agong confirmed the first detention order made against the appellant. The appellant applied for habeas corpus, which was dismissed. On appeal, the sole issue is whether art 151(1)(b) of the Federal Constitution gives power to the Yang di-Pertuan Agong to allow the extension of time for the Advisory Board to consider the representations and to make the recommendations under that article after the period of three months stated in that article has expired.